

**SUMMARIZED MINUTES  
SCOTTSDALE CITY COUNCIL  
REGULAR MEETING  
TUESDAY, SEPTEMBER 28, 2010**



**CITY HALL KIVA  
3939 N. DRINKWATER BOULEVARD  
SCOTTSDALE, AZ 85251**

**CALL TO ORDER**

Mayor W.J. "Jim" Lane called to order a Regular Meeting of the Scottsdale City Council at 5:12 P.M. on Tuesday, September 28, 2010 in the City Hall Kiva.

**ROLL CALL**

Present: Mayor W.J. "Jim" Lane  
Vice Mayor Suzanne Klapp  
Councilmembers Lisa Borowsky, Wayne Ecton, Robert Littlefield,  
Ron McCullagh, and Marg Nelssen

Also Present: City Manager David Richert  
City Attorney Bruce Washburn  
City Clerk Carolyn Jagger  
City Treasurer David N. Smith

**PLEDGE OF ALLEGIANCE** – Daisy Troop 2136, Cheyenne Traditional School

**INVOCATION** – Pastor Kent Sharpe, Arizona Seventh Day Adventist Conference

**CITY MANAGER'S REPORT** – City Manager David Richert provided an update on the City's free Community Energy Audit Program, which assists eligible citizens and businesses in south Scottsdale in identifying potential improvements to save money and energy. The program is funded with federal stimulus money and has approved 164 applications to date.

**PRESENTATIONS/INFORMATION UPDATES** – Mayor Lane announced the 16<sup>th</sup> Annual McDowell Sonoran Month kickoff events on September 30<sup>th</sup> at DC Ranch Marketplace, which include the McDowell Sonoran Conservation Festival and the Scottsdale Cycling Festival.

**NOTE:** IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. THESE MINUTES ARE INTENDED TO BE AN ACCURATE REFLECTION OF ACTION TAKEN BY THE CITY COUNCIL. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

## **PUBLIC COMMENT**

**Leon Spiro**, Scottsdale resident, presented a citizen petition (attached) asking the Council to obtain clarification from the Arizona Supreme Court regarding the legality and case law status of Arizona appellate court case decision Neal v. Brown, Case No. 1 CA-CV 06-0756.

**Guy Phillips**, Scottsdale resident, expressed concern that the Council continues to approve millions of dollars' worth of consent agenda items in the face of the looming budget deficit. He believes the consent agenda should be reserved for items that do not cost the City money.

## **MINUTES**

**Request:** Approve the **Regular Meeting Minutes of August 30 and 31, 2010** and **Special Meeting Minutes of August 30, 2010 and September 14, 2010**.

## **MOTION AND VOTE – MINUTES**

COUNCILMEMBER MCCULLAGH MOVED TO APPROVE THE REGULAR MEETING MINUTES OF AUGUST 30 AND 31, 2010, AND SPECIAL MEETING MINUTES OF AUGUST 30, 2010 AND SEPTEMBER 14, 2010. COUNCILMEMBER ECTON SECONDED THE MOTION, WHICH CARRIED 7/0.

## **ADDED ITEMS**

### **A1. Added Items**

Item No. 21A was added to the agenda on September 23.

**Request:** Vote to accept the agenda as presented or to continue the added item to the next scheduled Council meeting, which is October 5, 2010.

## **MOTION AND VOTE – ADDED ITEMS**

COUNCILMEMBER MCCULLAGH MOVED TO ACCEPT THE AGENDA AS PRESENTED. COUNCILMEMBER LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 7/0.

ITEM 18 WAS REMOVED FROM THE CONSENT AGENDA.

## **CONSENT AGENDA**

### **1. Safeway No. 1849 Liquor License (70-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 32551 N. Scottsdale Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

### **2. Safeway No. 1663 Liquor License (71-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 20901 N. Pima Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**3. Safeway No. 1126 Liquor License (72-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 11275 E. Via Linda

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**4. Safeway No. 1491 Liquor License (73-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 7920 E. Chaparral Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**5. Safeway No. 2032 Liquor License (74-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 10773 N. Scottsdale Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**6. Safeway No. 1253 Liquor License (75-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 23565 N. Scottsdale Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**7. Safeway No. 1549 Liquor License (76-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 14696 N. Frank Lloyd Wright Boulevard

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**8. AJ's No. 173 Liquor License (77-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 18271 N. Pima Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**9. Bashas' No. 7 Liquor License (78-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 8035 E. Indian School Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**10. Bashas' No. 99 Liquor License (79-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 10111 E. Bell Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**11. Bashas' No. 97 Liquor License (80-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 20745 N. Scottsdale Road

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**12. AJ's No. 70 Liquor License (81-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 9S (liquor store with sampling privileges) liquor license for an existing location and owner.

**Location:** 10105 E. Via Linda

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**13. IL Bosco Pizza Liquor License (84-LL-2010)**

**Request:** Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a new location and owner.

**Location:** 32607 N. Scottsdale Road, Suite 104

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**14. Northsight Park Utility Easement Agreement**

**Request:** Adopt **Resolution No. 8444** approving Agreement No. 2010-156-COS with NewPath Networks to pay the City for a utility easement to be granted by the City to Arizona Public Service Company (APS); and authorizing the grant of a utility easement to APS for electrical and telecommunications facilities.

**Staff Contact(s):** Dan Worth, Public Works Executive Director, 480-312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

**15. Bed Tax Revenue Fund Transfer for Construction of WestWorld ADA Parking**

**Request:** Adopt **Resolution No. 8448** authorizing the transfer of \$175,000 from FY 2010/11 General Fund Operating Bed Tax Revenues to the Capital Improvement

Program; and authorize a Capital Contingency Transfer, in the same amount, to CIP Project D0902, WestWorld ADA, for the construction of a new WestWorld ADA parking lot.

**Staff Contact(s):** Dan Worth, Public Works Executive Director, 480-312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

Discussion:

- A Councilmember asked why bed tax revenues are providing the funding for handicapped parking improvements at WestWorld. Economic Vitality Executive Director Harold Stewart explained that Council previously identified the improvements on a list of potential projects to be funded through bed tax allocations.

**16. Arizona Criminal Justice Commission Full-Service Forensic Crime Laboratory Grant Program**

**Request:** Adopt **Resolution No. 8409** to:

1. Authorize Contract No. 2010-144-COS accepting the Arizona Criminal Justice Full-Service Crime Laboratory Grant in the amount of \$108,000 to fund a Criminalist IV/DNA Technical Leader position.
2. Authorize the creation of a Criminalist IV/DNA Technical Leader full-time position.
3. Authorize a budget transfer for the grant amount from the adopted FY 2010/11 Future Grants Budget and/or from the Grant Contingency Budget; and authorize the creation of a new cost center assigned to record the related grant activity.

**Staff Contact(s):** Alan Rodbell, Chief of Police, 480-312-1901, [arodbell@scottsdaleaz.gov](mailto:arodbell@scottsdaleaz.gov)

**17. Independent Ethics Reviewer Service Contracts**

**Request:** Adopt **Resolution No. 8441** authorizing service contracts to ten retired judges to serve as independent ethics reviewers, required by Scottsdale Revised Code, Section 2-57, as follows:

1. Contract No. 2010-147-COS with Noel Fidel
2. Contract No. 2010-148-COS with Stanley Z. Goodfarb
3. Contract No. 2010-149-COS with Robert D. Myers
4. Contract No. 2010-150-COS with Cecil B. Patterson
5. Contract No. 2010-151-COS with William J. Shafer
6. Contract No. 2010-152-COS with David R. Cole
7. Contract No. 2010-153-COS with William P. French
8. Contract No. 2010-154-COS with Steven D. Sheldon
9. Contract No. 2010-155-COS with Kenneth L. Fields
10. Contract No. 2010-158-COS with William P. Sargeant, III

**Staff Contact(s):** Bruce Washburn, City Attorney, 480-312-2659, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

**18. Recommendation to Name a Summit West of Pinnacle Peak "Chuckwalla Mountain"**

**Request:** Adopt **Resolution No. 8443** to recommend to the Arizona State Board on Geographic and Historic Names that the City approves the proposed name "Chuckwalla Mountain" for a summit west of Pinnacle Peak.

**Staff Contact(s):** William Murphy, Community Services Executive Director, 480-312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

ITEM 18 WAS REMOVED FROM THE CONSENT AGENDA.

**19. Community Services Facilities Master Plan**

**Request:** Adopt **Resolution No. 8429** approving the Parks and Recreation Element of the 2004 Community Services Facilities Master Plan.

**Staff Contact(s):** William Murphy, Community Services Executive Director, 480-312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

**20. Investment Management Services Contract**

**Request:** Adopt **Resolution No. 8449** approving Professional Services Contract No.

2010-160-COS with PFM Asset Management LLC for investment management services.

**Staff Contact(s):** David N. Smith, City Treasurer, 480-312-2364, [dasmith@scottsdaleaz.gov](mailto:dasmith@scottsdaleaz.gov)

**21. Intergovernmental Agreement with Salt River Pima-Maricopa Indian Community for Acceptance of Proposition 202 Funds**

**Requests:**

1. Adopt **Resolution No. 8450** authorizing Intergovernmental Agreement No. 2010-162-COS with the Salt River Pima-Maricopa Indian Community to accept \$458,740 in Proposition 202 Tribal Gaming funds; and authorize the transfer of \$458,740 from the Grant Contingency and/or the Future Grants Budget adopted in the FY 2010/11 Grants Budget to the center assigned to record the grant activity.
2. Adopt **Resolution No. 8452** authorizing additional funding, in the amount of \$75,000, for marketing activities under Destination Marketing Services Agreement No. 2010-098-COS with the Scottsdale Convention and Visitors Bureau for destination marketing services.

**Staff Contact(s):** Brad Lundahl, Acting Government Relations Director, 480-312-2683, [blundahl@scottsdaleaz.gov](mailto:blundahl@scottsdaleaz.gov)

**21A. Scottsdale Highlands Church and Florence Nelson Park Development Agreement**

**Request:** Adopt **Resolution No. 7552** authorizing Development Agreement No. 2008-057-COS with Highlands Community Church, Prado Community Association, and Ike Matteson Companies (La Mirada Shopping Center) for an access driveway serving properties adjacent to Florence Nelson Park.

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

**MOTION AND VOTE – CONSENT AGENDA**

COUNCILMEMBER LITTLEFIELD MOVED TO APPROVE CONSENT AGENDA ITEMS 1 THROUGH 21A, MINUS ITEM 18. COUNCILMEMBER ECTON SECONDED THE MOTION, WHICH CARRIED 7/0.

**REGULAR AGENDA**

**22. Monthly Financial and Budget Planning Updates**

**Request(s):**

1. Discuss, consider, and provide possible direction on the City Treasurer's August 2010 financial summary presentation.
2. Discuss, consider, and provide possible direction on the City Manager's budget planning presentation.

**Presenter:** David N. Smith, City Treasurer; David Richert, City Manager

**Staff Contact(s):** David N. Smith, City Treasurer, 480-312-2364,  
[dasmith@scottsdaleaz.gov](mailto:dasmith@scottsdaleaz.gov)

City Treasurer David Smith gave a PowerPoint presentation (attached) providing an overview of general fund results, sales tax revenue, current macroeconomic indicators, potential budget adjustments, the revised budget shortfall, and the consensus forecast for a moderate and slow economic recovery.

City Manager David Richert outlined current and proposed budget measures to address next fiscal year's projected budget deficit, including holding spending to FY 2009/10 levels and considering temporary adjustments to services provided to the community. He asked the Council to contemplate the use of performance-based pay in the future to reward employees for contributing to budget savings.

Discussion:

- A Councilmember asked what specifically will be cut from the budget and who will be making the spending decisions. Mr. Richert clarified that department heads are managing the task of making the spending decisions, with the understanding that the Council will have the opportunity to address service level issues if complaints arise from the community.
- A Councilmember expressed concern regarding performance-based pay in light of the budget deficit.
- A Councilmember stressed the importance of focusing on tourism, tourism infrastructure, and business revitalization to improve the economic outlook.

**23. Noise Wall Options for the West Side of Loop 101 From Via Linda to Camelback Walk**

**Request:** Discuss and consider the following options for Arizona Department of Transportation (ADOT) noise wall on the west side of Loop 101 from Via Linda to Camelback Walk:

- a. Support current ADOT plans and have a new noise wall constructed according to current design and schedule; **OR**
- b. Adopt **Resolution No. 8457** authorizing a budget transfer of \$214,000 from Capital Improvement Project S0308, Indian School Road, to fund a newly created capital improvement project, titled Pima Freeway Noise Wall Modification, to enhance the aesthetics of the new ADOT noise wall by adding a second color in the event that additional regional funds are not available; **OR**
- c. Request that ADOT remove the construction of Wall 8 from current project plans and incorporate the construction of the wall into a future Loop 101 expansion project; **OR**
- d. Request that the Maricopa Association of Governments delay or delete the freeway widening project slated for construction in 2014.

**Presenter:** Dave Meinhart, Transportation Director

**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

Transportation Director Dave Meinhart gave a PowerPoint presentation (attached) detailing background information, project locations, community involvement, and a summary of options.

Mayor Lane opened public testimony.

**Sam Campana**, speaking on behalf of the Scottsdale Public Art Board, expressed disappointment that the original noise wall might be replaced with a much simpler design. She encouraged the Council to consider Option B, which would incorporate a second color in the wall construction.

**Guy Phillips**, Scottsdale resident, expressed concern regarding transferring funds from a capital improvement project for the purpose of adding a second color to the noise wall.

**Barbara Fazio**, Scottsdale resident, encouraged the Council to support Option B.

Mayor Lane closed public testimony.

Discussion:

- It was noted that the funding to add a second color to the noise wall would come from the Indian School Road Project. It was asked how the fund transfer of \$214,000 would impact the Indian School Road Project. Mr. Meinhart replied that the Indian School Road Project is basically complete and would not be impacted. However, he acknowledged that the transfer would diminish funds available for future transportation improvement projects.
- A Councilmember commented that, in the current budget climate, other improvement projects should take precedence over public art projects.
- A Councilmember asked what the cost would have been to construct an additional noise wall north of Indian School Road as part of the Indian School Road Project. Mr. Meinhart responded that the estimated cost was between \$250,000 and \$300,000.
- A Councilmember expressed concern about using funds which could not be used for a noise wall at one location to aesthetically improve a noise wall at another location.
- It was asked if the Council could request that ADOT construct a multi-color wall only if regional funding is available. Mr. Meinhart explained that ADOT must bid the project based on the design plans, and that any color change would require a modification to the plans.
- Mr. Meinhart advised the Council that the City can add enhancements to the wall as part of a future project. Mr. Meinhart said ADOT is willing to work with the City at any time on embellishments attached to the noise wall on the non-freeway side, as long as the City maintains those attachments.

**MOTION AND VOTE – ITEM 23**

COUNCILMEMBER LITTLEFIELD MOVED TO ADOPT OPTION A. COUNCILMEMBER ECTON SECONDED THE MOTION, WHICH CARRIED 6/1, WITH COUNCILWOMAN BOROWSKY DISSENTING.

**24. Special Noise Violations Code Amendment and General Fund Contingency Transfer**

**Requests:**

1. Adopt **Ordinance No. 3912** adding Article II to Chapter 19 of the Scottsdale Revised Code for the regulation of Special Noise Violations.
2. Adopt **Resolution No. 8459** authorizing a one-time General Fund Contingency transfer of \$52,700 to the Neighborhood Department for implementation of Ordinance No. 3912.

**Presenter:** Raun Keagy, Neighborhood Resources Director



**Staff Contact(s):** Connie Padian, Acting Planning, Neighborhood, and Transportation Executive Director, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

Neighborhood Resources Director Raun Keagy gave a PowerPoint presentation (attached) outlining features of the proposed ordinance, resource implications, stakeholder involvement and community outreach, the Tourism Development Commission recommendation, and objectives and outcomes.

Mayor Lane opened public testimony.

**John Greco**, Scottsdale resident, believes the proposed noise ordinance does not address excessive noise and is not applicable in downtown mixed-use areas.

**Barry Bennett**, downtown Scottsdale resident, expressed support for the ordinance even though he believes it discriminates against businesses and people living in mixed-use buildings.

**Linda Zarouchis**, downtown Scottsdale resident, said it was important to protect citizens' quality of life including protection for people living in mixed-use areas.

**Robert Becker**, downtown Scottsdale resident, spoke in support of a complaint-driven ordinance that includes mixed-use areas.

**Guy Phillips**, Scottsdale resident, asked the Council to consider costs related to code enforcement of the proposed ordinance.

**William Rubel**, Scottsdale resident, speaking on behalf of The Venue of Scottsdale, expressed concern that the ordinance might stifle business and suggested amending the language in Section 19-26 of the proposed ordinance to read: "...one or more individuals that reside within a dwelling that is zoned residential."

**Pat Lamer**, Scottsdale resident, commented that the proposed ordinance is inadequate and does not protect downtown residents.

**Todd Grobstein**, representing the W Scottsdale Hotel, commented that the hotel continues to monitor noise through sound meters. He supports an ordinance that is complaint-driven.

**Sonnie Kirtley**, Scottsdale resident and Coalition of Greater Scottsdale chairperson, said the proposed noise ordinance is a good first step, because it addresses excessive noise, is not complaint-driven, decriminalizes the violation, and has measurable criteria.

**Andrew Chippindall**, General Manager of Hotel Valley Ho, believes the proposed ordinance provides necessary guidelines for businesses and will create the right balance for the community. However, he asked that the language be amended to reflect its original complaint-driven format.

**Tony Hamati**, Bravo Bistro owner, commented that his business is losing customers due to excessive noise from neighboring businesses. He supports a stricter noise ordinance.

**Valerie Bennett**, Scottsdale resident, spoke on behalf of Villa Monterey residents who support adoption of the proposed noise ordinance.

**Cindi Eberhardt**, Executive Vice President of the Scottsdale Area Chamber of Commerce, believes the goal should be to advance balanced policy that provides guidance, consistency, and predictability to both residential neighborhoods and the business community. She urged the Council to support the proposed ordinance.

Mayor Lane closed public testimony.

Discussion:

- A Councilmember commented that the proposed ordinance is fatally flawed because it does not protect residents in downtown or multi-use developments, it does not address the biggest noise violators (pedicabs and golf carts), and it creates unnecessary bureaucratic red tape for businesses already struggling economically.

**MOTION – ITEM 24**

COUNCILWOMAN BOROWSKY MOVED TO ADOPT ORDINANCE NO. 3912, AMENDING SECTION 19-26A, TO REVISE THE LANGUAGE TO READ “IT SHALL BE UNLAWFUL FOR A BUSINESS THAT SERVES ALCOHOL OR PROVIDES LIVE ENTERTAINMENT TO CREATE UNREASONABLE NOISE THAT THROUGH ITS OPERATIONS DISTURBS THE PEACE OR QUIET OF ONE OR MORE INDIVIDUALS THAT RESIDE WITHIN A DWELLING THAT IS ZONED IN A RESIDENTIAL DISTRICT.” MAYOR LANE SECONDED THE MOTION.

Continued discussion:

- A Councilmember remarked that the proposed ordinance was changed from its original complaint-driven format, which had been vetted through and supported by the community.
- A Councilmember commented that the estimated \$52,000 annual cost of measuring sound in the downtown area is minimal compared to the annual cost of maintaining a downtown police squad.
- A Councilmember indicated that the ordinance format was changed after neighborhood outreach yielded strong support for a non complaint-driven ordinance.
- Several Councilmembers expressed support for passing the proposed ordinance as a starting point, even though it is not perfect and might need improvement in the future.

**SUBSTITUTE MOTION AND VOTE – ITEM 24**

COUNCILMEMBER MCCULLAGH MOVED TO ADOPT ORDINANCE NO. 3912 ADDING ARTICLE II TO CHAPTER 19 OF THE SCOTTSDALE REVISED CODE FOR THE REGULATION OF SPECIAL NOISE VIOLATIONS. COUNCILMEMBER ECTON SECONDED THE MOTION, WHICH CARRIED 5/2, WITH MAYOR LANE AND COUNCILWOMAN BOROWSKY DISSENTING.

**Public Comment** – None

**Mayor and Council Items** – None

**Adjournment**

With no further business to discuss, the Regular Meeting adjourned at 8:06 P.M.

 DRAFT

Scottsdale City Council Regular Meeting  
Tuesday, September 28, 2010

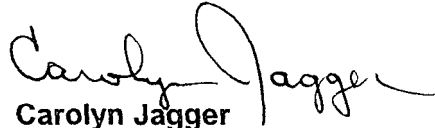
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**SUBMITTED BY:**



**Melissa Patno**  
**Executive Secretary**

**REVIEWED BY:**



**Carolyn Jagger**  
**City Clerk**

Officially approved by the City Council on \_\_\_\_\_

### **C E R T I F I C A T E**

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 28th of September 2010.

I further certify that the meeting was duly called and held, and that a quorum was present.

**DATED** this 19th day of October 2010.

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**CAROLYN JAGGER**  
City Clerk

# SUBMIT PETITION.

Petition: The following Citizen/ Citizens submit the following Petition to the Scottsdale City Council to obtain from the Arizona Supreme Court Justices, clarification as to the legality and the Case Law Status of Arizona Appellate Court Case Decision, Neal v. Brown, # 1 CA-CV 06-0756, decisioned on 8 July 2008. This decision by the Appellate Court in this Case, has been used by Assistant City Attorney Joe Padilla, to convince Planning Commissioners and present Council Members, as to the correctness and legality of the Cities Roadway and Public Utility Abandonment Policy, regarding Patented Parcels, sold under the provisions of the Small Tract Act of 1938. I believe that Arizona Appellate Court, Division 1, Neal v. Brown, Case #1 CA-CV 06-0756 was "decisioned on incorrect information" presented in "error to the Courts". "This Case should never have been heard in either the Arizona Superior Court or the Arizona Appellate Court".

Regarding the issue of the placement of the fence in question, I believe, "construction was never authorized". Presently, Maricopa County Code Enforcement, has issued a Violation Notice, #V201000351, and has ordered the fence removal from its present encroaching roadway location. True, it is a comedy of errors, created by the issuance, "in error", of a "fence Permit", and the "Applicant's failure", I believe, to abide by instructions, and "failure to receive a permit for construction of this fence" in question. Please be advised that Maricopa County Department of Transportation does not issue "construction permits" to encroach on "patent easements". On 14 January 2009, Roadway Abandonment Case # 22-AB-2005 was presented to the Scottsdale City Planning Commission. Assistant City Attorney Padilla and the Applicant's Attorney presented statements to the Planning Commission, and referenced this Appellate Court Case decisioning as fact, in order to convince the Commissioners that "approving Abandonment

Request, # 22-AB-2010, was legally correct. Planning Commission Meeting "Approved Minutes" state: "The issues surrounding individuals utilizing easements for ingress and egress has been litigated". "The ruling was that GLO easements are not granted for the express purpose of providing ingress and egress to private property owners". It is assumed that Attorney Padilla was referencing Appellate Court Case Neal v. Brown, #1 CA-CV 06-0756, Appellate Court Case Division 2, Bernal v. Loeks, decisioned the direct opposite.

One might call Neal v. Brown a "Case Law Sting". And if it is done once, it will be done again, here in Arizona. But this I do know, through Planning Commission and Council "approval action", my "66 foot wide Front Street" has been made into a "15 foot wide Alley Trail". Regarding Arizona Appellate Court Case # 1 CA-CV 06-0756, it is essential that this Council and Legal Department seek the Arizona Supreme Court's Ruling on the issue of this Appellate Court Decision. This referenced Appellate Court Case, Neal v. Brown, which we understand is now considered "Case Law", is based on an "unwarranted act" that should never have been litigated, and was

caused by the submission of "false information", presented to the Division 1, Arizona Appellate Court. Petitioner/ Petitioners: Leon Spiro, A Citizen of Scottsdale. PS: This Appellate Court Case, Neal v. Brown, # 1 CA-CV 06-0756 decision, affects over 8000 Parcel Owners that have obtained Small Tract of 1938 Federal Patented Parcels that contain a deeded "Roadway and Public Utilities Easement" that remains, we believe, in "perpetuity". It is an obligation for an honest Council, to request the Legal Opinion from the Arizona Attorney General regarding the questionable policy, by the City of Scottsdale, of permitting encroachment upon these deeded easements after "abandonment of only the Cities interest" in these easements. LS.

2010 SEP 28 PM 5:16  
OFFICE OF THE  
CITY CLERK

## **Monthly Financial Update**

### **As of August 31, 2010**

Budget Review Commission

September 23, 2010

Prepared by: Finance and Accounting Division

## **August 2010 General Fund Results**

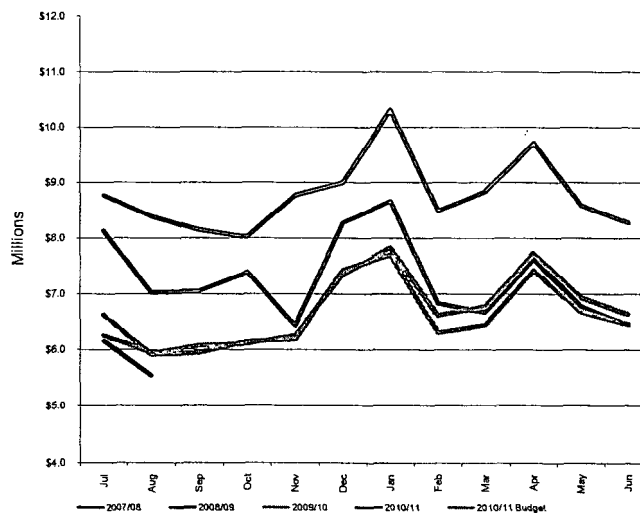
(in millions)

	Revised Budget	Actual	Change	% Change
Sources	\$15.5	\$15.2	(\$0.3)	(2%)
Uses	19.3	18.4	0.9	5%
Change in Fund Balance	(\$3.8)	(\$3.2)	\$0.6	

## FYTD General Fund Results as of 8/31/10 (in millions)

	Revised Budget	Actual	Change	% Change
Sources	\$37.3	\$36.3	(\$1.0)	(3%)
Uses	37.8	35.0	2.8	7%
Change in Fund Balance	(\$0.5)	\$1.3	\$1.8	

## City of Scottsdale 1% Sales Tax Category: Total



**FYTD General Fund  
Operating Uses  
as of 8/31/10** (in millions)

	Revised Budget	Actual	Change	% Change
Personnel Services	\$25.8	\$25.4	\$0.4	2%
Contractual	9.6	8.1	1.5	16%
Commodities	1.1	0.7	0.4	36%
Capital Outlay	0.5	-	0.5	100%
Debt Service & Contracts Payable	0.3	0.3	-	-
Transfers Out	0.5	0.5	-	-
<b>Total</b>	<b>\$37.8</b>	<b>\$35.0</b>	<b>\$2.8</b>	<b>7%</b>

**FYTD Personnel Services  
as of 8/31/10**  
(in millions)

	2009/10 Estimate	2010/11 Actual	2010/11 Revised Budget	Change	% Change
Salaries and Wages	\$20.2	\$18.7	\$18.9	\$0.2	1%
Overtime	0.8	0.9	1.0	0.1	10%
Retirement	2.1	2.0	2.1	0.1	5%
Health/Dental	2.6	2.4	2.4	-	0%
FICA	1.4	1.3	1.3	-	0%
Misc. Fringes	0.1	0.1	0.1	-	0%
<b>Total</b>	<b>\$27.2</b>	<b>\$25.4</b>	<b>\$25.8</b>	<b>\$0.4</b>	<b>2%</b>



## General Fund & Transportation Fund Division Spending (in millions)

	5 <sup>th</sup> Close FY 09/10	Current Budget/Forecast		Revised Budget/Forecast	
		Adopted FY 10/11	Forecast FY 11/12	Budget FY 10/11	Forecast FY 11/12
Division Spending	\$251.6	\$257.4	\$268.8	\$249.4	\$255.7
Budget Shortfall					
Division Spending (over)/under FY09/10	0.0	(5.8)	(17.2)	0.0	0.0
Allowed Adjustments	0.0	0.0	0.0	2.2	(4.1)
"Other Issues"	(3.5)	(2.7)	(11.2)	(2.7)	(11.2)
<b>Budget Shortfall</b>	<b>(\$3.5)</b>	<b>(\$8.5)</b>	<b>(\$28.4)</b>	<b>(\$0.5)</b>	<b>(\$15.3)</b>

## General Fund & Transportation Fund Division Spending (in millions)

	Revised Budget FY 10/11	Revised Forecast FY 11/12
<b>Revised Budget Shortfall</b>	<b>(\$0.5)</b>	<b>(\$15.3)</b>
<i>Potential Budget Adjustments</i>		
Bed Tax – Revised Estimate	1.5	1.5
State Income Tax – Revised Estimate	0.0	2.4
COP Debt Refinancing	0.2	3.5
Medical Insurance Premium Change	0.0	1.1
DUI Monitoring Program	0.3	0.5
Performance Based Pay	0.0	(3.4)
<b>Potential Budget Shortfall</b>	<b>\$1.5</b>	<b>(\$9.6)</b>

# Transaction Privilege Tax - 1 Percent General Purpose

	FY				FYTD			
	FY	FY			FYTD	FYTD		
	2009/10	2010/11	\$	%	2009/10	2010/11	\$	%
	Actual	Adopted Budget	Change	Change	Revenue	Revenue	Change	Change
Misc. Retail Stores	\$12.2	\$12.5	\$0.4	2.9%	\$1.7	\$1.8	\$0.1	5.8%
Rentals	10.9	12.3	1.3	12.1%	2.1	1.9	(0.2)	-10.3% <sup>1</sup>
Major Dept. Stores	9.0	9.0	0.0	0.1%	1.3	1.3	0.0	1.0%
Automotive	8.4	8.6	0.1	1.4%	1.4	1.3	(0.1)	-4.1%
Construction	8.0	8.4	0.4	5.5%	1.8	1.3	(0.5)	-25.4% <sup>2</sup>
Dining/Entertainment	6.8	7.0	0.1	2.1%	0.9	1.0	0.1	9.2%
Food Stores	6.1	6.3	0.2	2.7%	0.8	0.9	0.1	14.7%
Other Taxable Activity	5.5	5.3	(0.2)	-3.6%	0.8	0.7	(0.0)	-5.8%
Utilities	4.5	4.6	0.1	2.8%	1.2	0.8	(0.3)	-29.2% <sup>3</sup>
Hotel/Motel	4.0	4.2	0.2	5.1%	0.4	0.4	0.0	5.3%
License Fees, Penalty & Interest	2.4	2.3	(0.1)	-2.9%	0.2	0.2	(0.1)	-26.5%
<b>Total Transaction Privilege Tax</b>	<b>\$77.9</b>	<b>\$80.5</b>	<b>\$2.6</b>	<b>3.4%</b>	<b>\$12.5</b>	<b>\$11.7</b>	<b>(\$0.8)</b>	<b>-6.8%</b>

<sup>1</sup> Commercial rental rates continue to decrease, which results in lower tax revenue.

<sup>2</sup> There has been a decrease in commercial building.

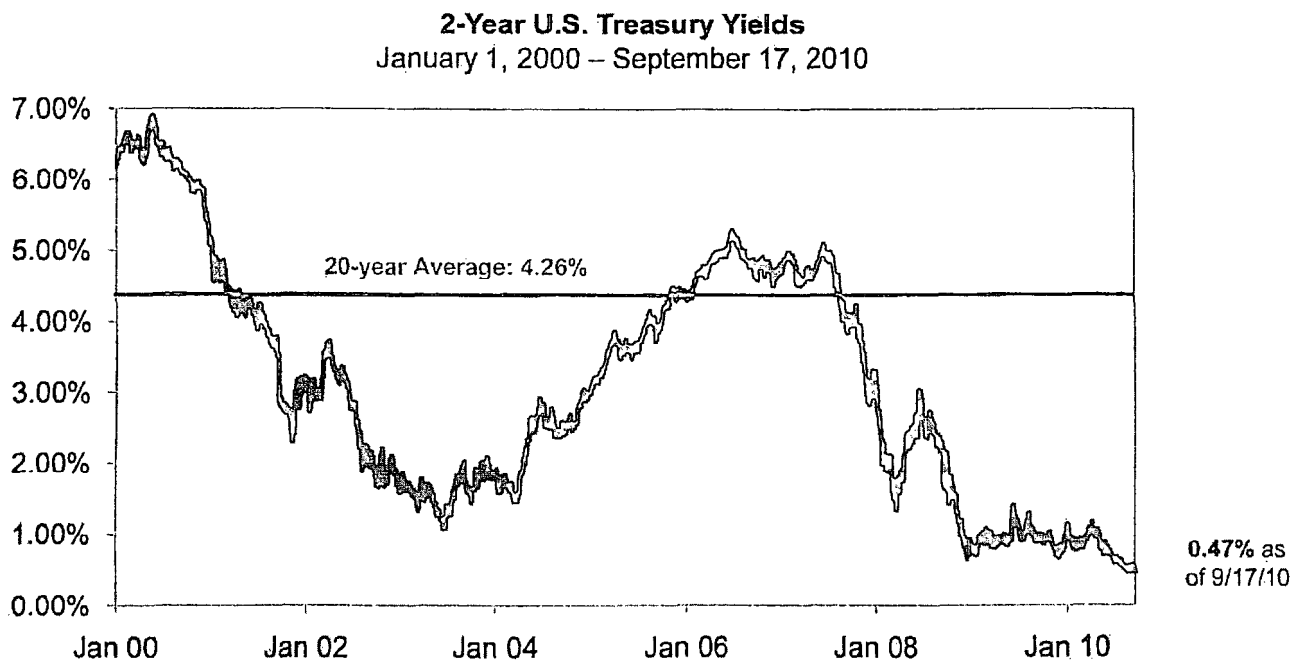
<sup>3</sup> A one time audit payment of \$400K was paid in FY09/10.

Amounts are in \$millions

\*Dollar changes and percent changes have been calculated on whole numbers rather than rounded numbers.

## Interest Rates Remain Near Historic Lows

- During the current year, yields have plunged to historic lows, recently falling as far as 0.47%.
  - Since January, yields have fluctuated between 1.18% and 0.47%.

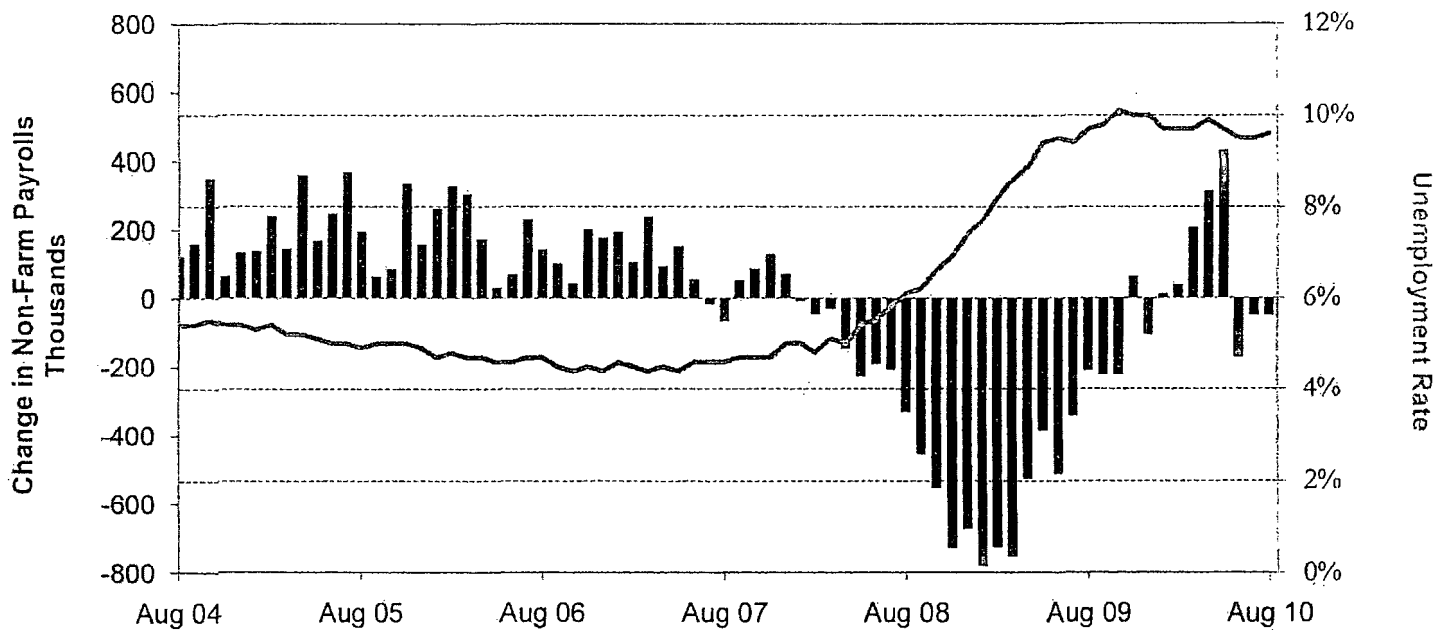


Source: Bloomberg

## Non-Farm Payrolls Decline, But Exceed Expectations

- Nonfarm payrolls dropped by 54,000, exceeding expectations for a 90,000 decrease. Private payrolls were a positive surprise as well, jumping up 67,000 instead of the anticipated 40,000.

Change in Non-Farm Payrolls/ Unemployment Rate  
August 2004 – August 2010

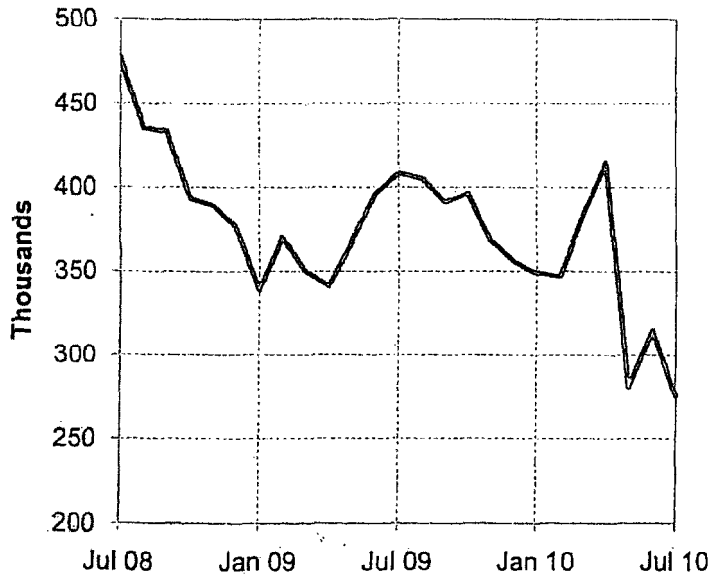


Source: Bloomberg

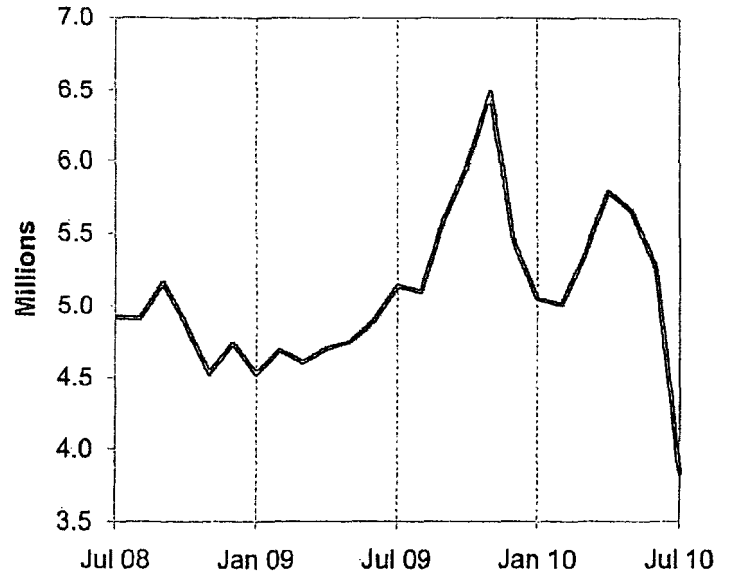
# Housing Sector Slide

- Sales of existing houses plunged by a record 27 % in July as the effects of a government tax credit waned, showing a lack of jobs threatens to undermine the U.S. economic recovery. Purchases plummeted to a 3.83 million annual pace, the lowest in a decade of record keeping .

**U.S. New Home Sales**  
July 31, 2008 – July 31, 2010



**U.S. Existing Home Sales**  
July 31, 2008 – July 31, 2010

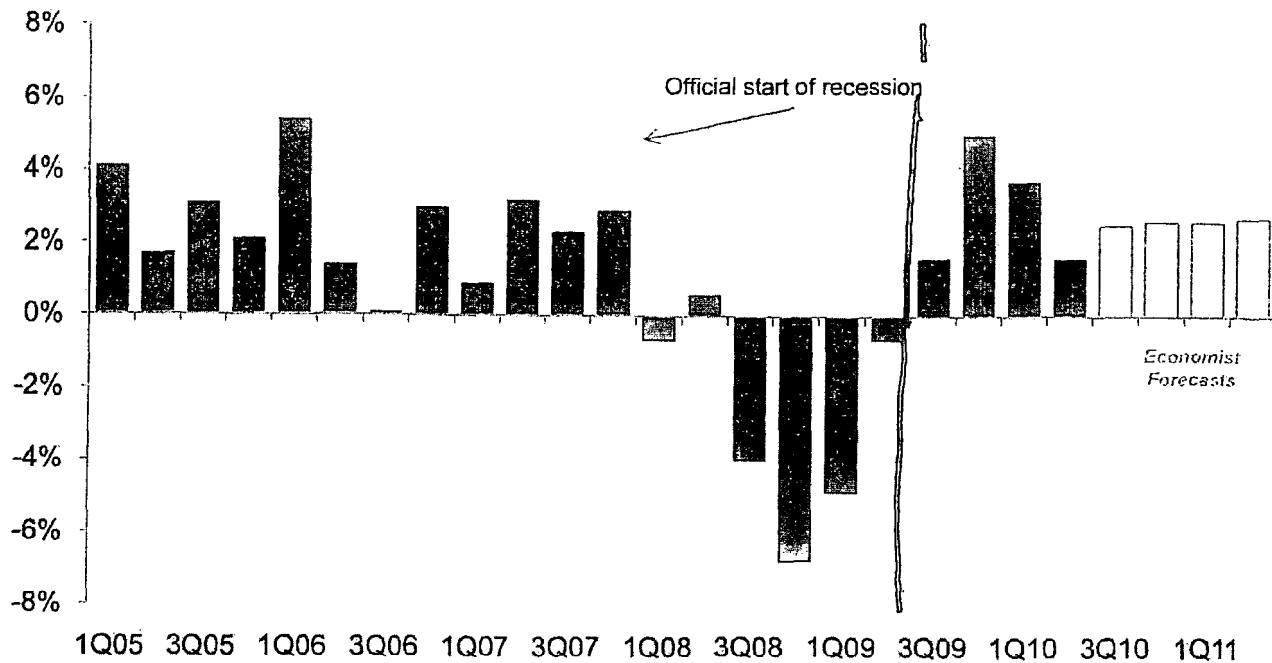


Source: Bloomberg

# Economic Growth Sluggish

- Second quarter GDP was revised downward to a 1.6% annualized rate from prior estimate of 2.4%. Revision was primarily due to wider trade deficit and smaller gain in inventories. Business investment and consumer spending remained level.

**Gross Domestic Product Growth**  
First Quarter 2005 – Second Quarter 2010



Source: U.S. Department of Commerce – Bureau of Economic Analysis and Bloomberg Survey of Economists median forecasts

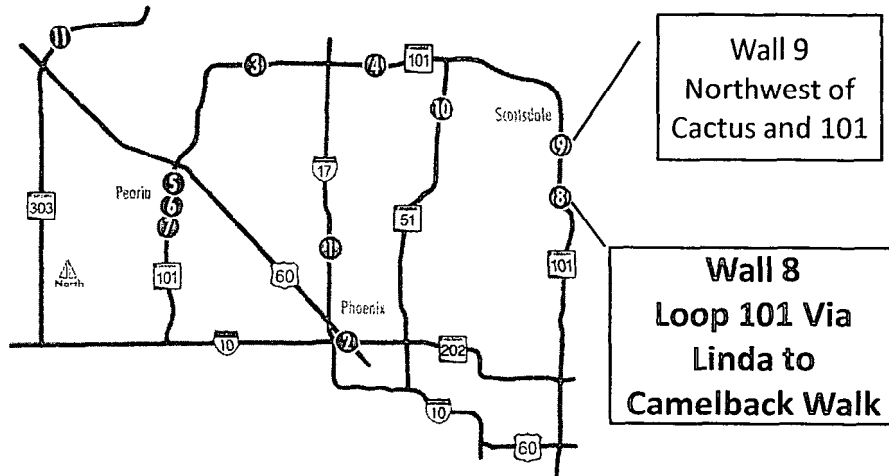
**Noise Wall Options  
for West Side of Loop 101  
from Via Linda to Camelback Walk**

**City Council Meeting  
September 28, 2010**

**Background**

- 1997 City paid approximately \$2.0 million to create "The Path Most Traveled" -
- MAG's 2003 *Regional Transportation Plan* authorized additional freeway noise mitigation
  - Proposition 400 provides funding
  - Used in areas not addressed in Proposition 300 freeway program
- Two Scottsdale neighborhoods approved for inclusion in noise wall project by MAG
  - Sands McCormick (Wall 8)
  - Greenstone/Astoria (Wall 9)

## Project Locations

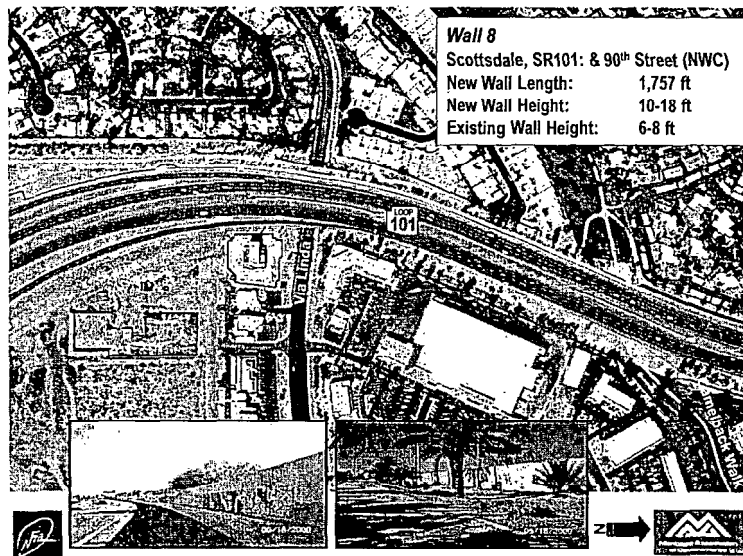


## Project information

- Wall 9 to be constructed to the east of existing HOA wall
- Wall 8 to be constructed west of existing freeway wall in location determined by future freeway widening
- Existing walls planned for removal
- Two bridges along Wall 8 will also be expanded to the west in preparation for ADOT Loop 101 General Purpose lanes project (anticipated 2013-14)



## MAG Noise Walls – Wall 8



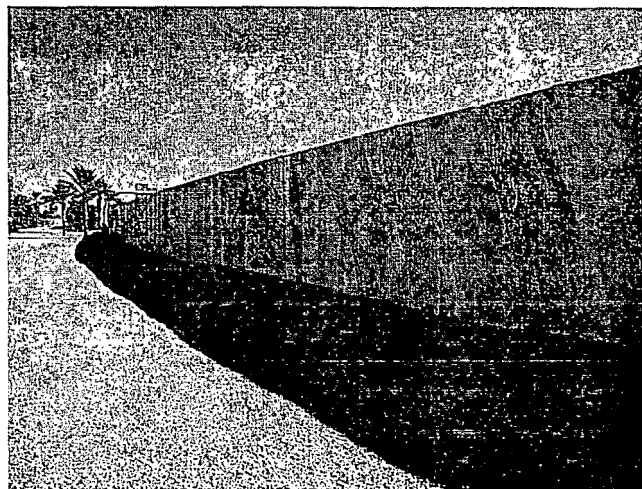
## Loss of art on Wall 8

- Wall 8 represents 10% of the total length of art walls along Loop 101, but much less in terms of area
- Coordination between ADOT, Scottsdale Public Art, City staff and original artist to come up with a replacement rustication
- Future freeway widening scheduled for FY14 would require relocation of existing wall

## **Community Involvement**

- Public meeting held on November 16, 2009 at the Mustang Library
- Response to news articles over past 3 months
- Discussion at Scottsdale Public Art board on June 9, 2010 and September 8, 2010
- Postcards to nearby residents processed on September 13, 2010

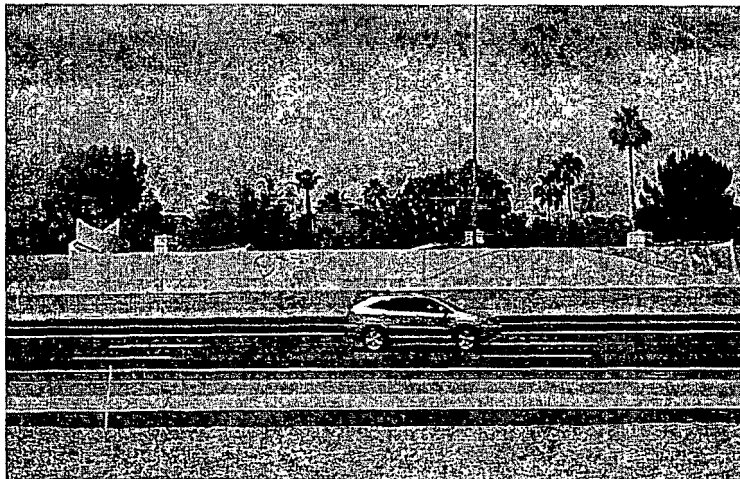
### **Wall 8 :Via Linda to Camelback Walk From the residential side**



**Wall 8 :Via Linda to Camelback Walk**  
**From the residential side**



**Wall 8 :Via Linda to Camelback Walk**  
**From the freeway side**



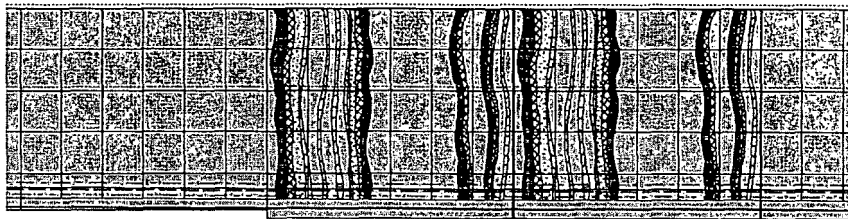
## **Wall 8 :Via Linda to Camelback Walk**

**From the freeway side**

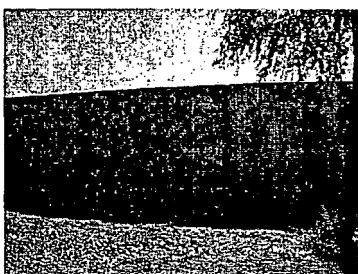
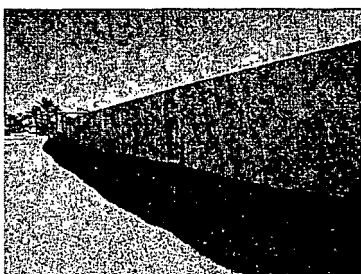


## **Replacement rustication**

- jointly created by original artist (Carolyn Braaksma)  
and original landscape architect (Jeff Engelmann)



**Current examples of rustication pattern: Via Linda to Camelback Walk**



**OPTIONS**

**Option A**

- Support current ADOT plans and have new noise wall constructed according to current design and schedule

**Option B**

- Adopt Resolution 8457, authorizing a budget transfer of \$214,000 to enhance the aesthetics of the new ADOT noise wall by adding a second color, in the event that additional regional funds are not available

**Option C**

- Request that ADOT remove the construction of Wall 8 from current project plans, and incorporate the construction of the wall into the future Loop 101 expansion project in FY 14

**Option D**

- Request that MAG delay or delete the freeway widening project slated for construction in FY 14

**DISCUSSION**  
DISCUSSION

# **Noise Ordinance and Enforcement**

Scottsdale City Council  
September 28, 2010

## **Overview**

- Ordinance Features
- Community Outreach
- Additional Objectives and Outcomes
- Council Action Requested

## **Ordinance Features**

- Only applies to businesses that serve alcohol and/or provide live entertainment
- Reasonable person standard used at least 100' from source, with maximum decibel threshold - 68dB(A)
- Staff proactively enforces, as well as investigates, citizen complaints

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## **Ordinance Features**

- Discretion to issue Notice of Violation (NOV) as first course of action
- Decriminalized - civil offense for first four violations
- Criminal habitual violator provision after four or more civil violations within 24 months

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## **Ordinance Features**

- Larger fines in general
- \$2,500 fine for violation of City-approved Special Events Permit
- Unamplified voice and crowd noise exempted
- Applicable citywide - except in Mixed Use areas

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## **Resource Implications**

- Total equipment costs: \$42,800
  - 33 sound level meters: \$36,200
  - Calibration costs: \$6,600
- Total training costs for 38 staff members (10 Code and 28 Police): \$9,900
  - "Community Noise Certification Program" includes class and field practical exams
- Total costs (equipment plus training): \$52,700
- Each sound level meter will require annual calibration at \$200 per device

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## **Stakeholders**

**(focused outreach)**

- ❑ Residents
- ❑ Entertainment Establishments and Hoteliers (Business)
- ❑ Tourism and Development Commission (TDC)

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## **Community Involvement**

- ❑ August 19, 2010 - Via Linda Senior Center
  - 17 attendees
- ❑ August 26, 2010 - Granite Reef Senior Center
  - 18 attendees
- ❑ “Noise Feedback” website
- ❑ COGS - Coalition of Greater Scottsdale

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## **TDC Recommendation**

- Supports the proposed Ordinance
  - Decriminalization of noise-based complaints
  - Ability to issue NOV in lieu of citation
  - Supports the efforts of the newly-formed Downtown Entertainment District Alliance

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## **Objectives and Outcomes**

- Develop a business/citizen group to give the City input on issues affecting business and neighborhood relationships
  - Downtown Entertainment District Alliance holding regular meetings
  - Establish best practices with the goal of reducing complaints

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## **Objectives and Outcomes**

- Assist the Special Events Committee to revisit stipulations on outdoor music
  - Limit hours when music can be played
  - Adjust locations of outdoor speakers
  - Identify onsite manager responsible for all aspects of music

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## **Action Requested**

- Adopt Ordinance No. 3912 to address unreasonable noise issues citywide
- Adopt Resolution No. 8459 authorizing a one-time \$52,700 General Fund Contingency transfer for implementation of Ordinance No. 3912

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